



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

CLASS PROCEEDINGS ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office

Tel: (902) 368-4292

Email: legislation@gov.pe.ca



CLASS PROCEEDINGS ACT

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CHAPTER C-9.01

CLASS PROCEEDINGS ACT

PART 1 - INTERPRETATION AND APPLICATION

1. Definitions

In this Act,

- (a) “**certification order**” means an order certifying a proceeding as a class proceeding;
- (b) “**class proceeding**” means a proceeding certified as a class proceeding under Part 2;
- (c) “**common issues**” means
 - (i) common but not necessarily identical issues of fact, or
 - (ii) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;
- (d) “**court**” means the Supreme Court, unless the context requires otherwise;
- (e) “**defendant**” includes a respondent;
- (f) “**lawyer**” means a barrister, solicitor or attorney entitled to practise under the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1;
- (g) “**multi-jurisdictional class proceeding**” means a proceeding that
 - (i) is brought on behalf of a class of persons that includes persons who do not reside in Prince Edward Island, and
 - (ii) is certified as a class proceeding under Part 2;
- (h) “**plaintiff**” includes a petitioner. *2021,c.30,s.1.*

2. Proceedings to which Act does not apply

This Act does not apply to

- (a) a proceeding that may be brought in a representative capacity under another Act;
- (b) a proceeding required by law to be brought in a representative capacity; and
- (c) a representative proceeding commenced before this Act comes into force. *2021,c.30,s.2.*

PART 2 - CERTIFICATION

3. Plaintiff’s class proceeding

- (1) A person who is a member of a class of persons may commence a proceeding in the court on behalf of the members of that class.

Motion for certification

- (2) The member who commences a proceeding under subsection (1) shall
- (a) make a motion to the court for an order
 - (i) certifying the proceeding as a class proceeding, and
 - (ii) subject to subsection (4), appointing the member as the representative plaintiff for the class proceeding; and
 - (b) give notice of the motion for certification to the representative plaintiff in any class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, that
 - (i) was commenced in another Canadian jurisdiction, and
 - (ii) involves the same or similar subject matter and some or all of the same class members.

Time for motion

- (3) A motion under subsection (2) shall be made
- (a) within 90 days after the later of
 - (i) the date on which the last notice of appearance or statement of defence was delivered, and
 - (ii) the date on which the time prescribed by the Rules of Civil Procedure for delivery of the last notice of appearance or statement of defence expires without its being delivered, or
 - (b) at any other time with leave of the court.

Non-member as representative plaintiff

- (4) The court may certify a person who is not a member of the class as the representative plaintiff for the class proceeding only if it is necessary to do so in order to avoid a substantial injustice to the class.

Plaintiff in other proceeding may appear

- (5) A plaintiff in another proceeding who receives notice of a motion for certification under clause (2)(b) may make submissions at the certification hearing. *2021,c.30,s.3.*

4. Defendant's class proceeding

A defendant to two or more proceedings may, at any stage of one of the proceedings, make a motion to a judge of the court for an order certifying the proceedings as a class proceeding and appointing a representative plaintiff. *2021,c.30,s.4.*

5. Early resolution of issues

Where, before the hearing of the motion for certification, a motion is made under the Rules of Civil Procedure that may dispose of the proceeding in whole or in part, or narrow the issues to be determined or the evidence to be adduced in the proceeding, that motion shall be heard and disposed of before the motion for certification, unless the court orders that the motions be heard together. *2021,c.30,s.5.*

6. Criteria for certification

- (1) Subject to subsections (2), (3) and (4), the court shall certify a proceeding as a class proceeding on a motion under section 3 or 4 if

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class of two or more persons who would be represented by the representative plaintiff;
- (c) the claims of the class members raise one or more common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff who
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.

Superiority of class proceeding

- (2) In the case of a motion under section 3, a class proceeding is the preferable procedure for the resolution of common issues only where, at a minimum,
 - (a) it is superior to all reasonably available means of determining the entitlement of the class members to relief or addressing the impugned conduct of the defendant, including, as applicable, a quasi-judicial or administrative proceeding, the case management of individual claims in a civil proceeding or any remedial scheme or program outside of a proceeding; and
 - (b) the questions of fact or law common to the class members predominate over any questions affecting only individual class members.

Existence of other class proceeding

- (3) Where a multijurisdictional class proceeding or a proposed multijurisdictional class proceeding has been commenced elsewhere in Canada that involves the same or similar subject matter to that of the proceeding being considered for certification, the court shall determine whether it would be preferable for some or all of the claims of the proposed class members to be resolved in that proceeding.

Objectives and factors in making determination

- (4) When making a determination under subsection (3), the court shall
 - (a) be guided by the following objectives:
 - (i) ensuring that the interests of all parties in each of the relevant jurisdictions are given due consideration,
 - (ii) ensuring that the ends of justice are served,
 - (iii) where possible, avoiding irreconcilable judgments,
 - (iv) promoting judicial economy; and
 - (b) consider all relevant factors, including the following:
 - (i) the alleged basis of liability, including the applicable laws,
 - (ii) the stage each of the proceedings has reached,
 - (iii) the plan for the proposed multi-jurisdictional class proceeding, including the viability of the plan and the capacity and resources for advancing the proceeding on behalf of the proposed class,

- (iv) the location of class members and class representatives in the various proceedings, including the ability of class representatives to participate in the proceedings and to represent the interests of class members,
- (v) the location of evidence and witnesses.

Effect of order

- (5) An order certifying a proceeding as a class proceeding is not a determination of the merits of the proceeding. *2021, c.30, s.6.*

7. Orders in multi-jurisdictional class proceeding

- (1) The court may make any order it considers appropriate in a motion to certify a multi-jurisdictional class proceeding, including an order
- (a) certifying the proceeding as a multi-jurisdictional class proceeding if
 - (i) the criteria in subsection 6(1) have been satisfied, and
 - (ii) having regard to subsections 6(3) and (4), the court determines that Prince Edward Island is the appropriate venue for the multi-jurisdictional class proceeding;
 - (b) refusing to certify the proceeding if the court determines that it should proceed as a multi-jurisdictional class proceeding in another jurisdiction; or
 - (c) refusing to certify a portion of a proposed class if that portion of the class contains members who may be included within a proposed class proceeding in another jurisdiction.

Authority of court - multi-jurisdictional class proceeding

- (2) Where the court certifies a multi-jurisdictional class proceeding, it may
- (a) divide the class into resident and non-resident subclasses;
 - (b) appoint a separate representative plaintiff for each subclass; and
 - (c) specify the manner in which and the time within which members of each subclass may opt out of the proceeding. *2021, c.30, s.7.*

8. Adjournment

The court may adjourn the motion for certification to permit the parties to amend their materials or pleadings or to permit further evidence. *2021, c.30, s.8.*

9. Representative plaintiff for subclass

Despite section 6, where a class includes a subclass whose members have claims that raise common issues not shared by all the class members so that, in the opinion of the court, the protection of the interests of the subclass members requires that they be separately represented, the court may, in addition to the representative plaintiff for the class, appoint a representative plaintiff for each subclass who

- (a) will fairly and adequately represent the interests of the subclass;
- (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the subclass and of notifying subclass members of the proceeding; and
- (c) does not have, on the common issues for the subclass, an interest that is in conflict with the interests of other subclass members. *2021, c.30, s.9.*



10. Certain matters not bar to certification

The court shall not refuse to certify a proceeding as a class proceeding by reason only of one or more of the following:

- (a) the relief claimed includes a claim for damages that would require individual assessment after determination of the common issues;
- (b) the relief claimed relates to separate contracts involving different class members;
- (c) different remedies are sought for different class members;
- (d) the number of class members or the identity of each class member is not ascertained or may not be ascertainable;
- (e) the class includes a subclass whose members have claims that raise common issues not shared by all class members. *2021,c.30,s.10.*

11. Contents of certification order - class

(1) A certification order shall

- (a) describe the class in respect of which the order was made by setting out the class's identifying characteristics;
- (b) appoint the representative plaintiff for the class;
- (c) state the nature of the claims asserted on behalf of the class;
- (d) state the relief sought by the class;
- (e) set out the common issues for the class;
- (f) state the manner in which and the time within which a class member may opt out of the proceeding; and
- (g) include any other provisions the court considers appropriate.

Contents of certification order - subclass

- (2) Where a class includes a subclass whose members have claims that raise common issues not shared by all the class members so that, in the opinion of the court, the protection of the interests of the subclass members requires that they be separately represented, the certification order shall include the same information in relation to the subclass that, under subsection (1), is required in relation to the class.

Amendment of certification order

- (3) The court may at any time amend a certification order on the motion of a party or class member or on its own motion. *2021,c.30,s.11.*

12. Effect of refusal to certify

Where the court refuses to certify a proceeding as a class proceeding, the court may permit the proceeding to continue as one or more proceedings between different parties and, for that purpose, the court may

- (a) order the addition, deletion or substitution of parties;
- (b) order the amendment of the pleadings; and
- (c) make any other order that it considers appropriate. *2021,c.30,s.12.*

13. Other powers of court

- (1) Without limiting subsection 11(3), at any time after a certification order is made under this Part, the court may amend the certification order, decertify the proceeding or make any other order it considers appropriate if it appears to the court that the conditions mentioned in section 6 or clause 7(1)(a) are not satisfied with respect to a class proceeding.

Effect of decertification order

- (2) Where the court makes a decertification order under subsection (1), the court may permit the proceeding to continue as one or more proceedings between different parties and may make any order referred to in clauses 12(a) to (c) in relation to each of those proceedings.
2021, c.30, s.13.

PART 3 - CONDUCT OF CLASS PROCEEDINGS

Role of Court

14. Stages of class proceeding

- (1) Unless the court otherwise orders under section 15, in a class proceeding,
- (a) common issues for a class shall be determined together;
 - (b) common issues for a subclass shall be determined together; and
 - (c) individual issues that require the participation of individual class members shall be determined individually in accordance with sections 30 and 31.

Judgments

- (2) The court may give judgment in respect of the common issues and separate judgments in respect of any other issue. *2021, c.30, s.14.*

15. Court may determine conduct of class proceeding

The court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate. *2021, c.30, s.15.*

16. Court may stay, sever other proceeding

The court may at any time stay or sever any proceeding related to the class proceeding on the terms the court considers appropriate. *2021, c.30, s.16.*

17. Judge who makes certification order to hear motions

- (1) The judge who makes a certification order shall hear all motions in the class proceeding before the trial of the common issues.

Where judge becomes unavailable

- (2) Where a judge who has made a certification order becomes unavailable for any reason to hear a motion in the class proceeding, the Chief Justice of the Supreme Court may assign another judge of the court to hear the motion.

Judge may but need not preside at trial

- (3) A judge who hears motions under subsection (1) or (2) may, but need not, preside at the trial of the common issues. *2021,c.30,s.17.*

Participation of Class Members**18. Participation of class members**

- (1) In order to ensure the fair and adequate representation of the interests of the class or any subclass or for any other appropriate reason, the court may, at any time in a class proceeding, permit one or more class members to participate in the proceeding if this would be useful to the class.

Manner, terms determined by court

- (2) Participation under subsection (1) shall be in the manner and on the terms, including terms as to costs, that the court considers appropriate. *2021,c.30,s.18.*

19. Opting out by class member

A member of a class involved in a class proceeding may opt out of the proceeding in the manner and within the time specified in the certification order. *2021,c.30,s.19.*

20. Rights of discovery of parties

- (1) Parties to a class proceeding have the same rights of discovery under the Rules of Civil Procedure against one another as they would have in any other proceeding.

Discovery of other class members by defendant

- (2) After discovery of the representative plaintiff or, in a proceeding referred to in section 9, one or more of the representative plaintiffs, a defendant may, with leave of the court, discover other class members.

Matters for court's consideration

- (3) In deciding whether to grant a defendant leave to discover other class members, the court shall consider
- (a) the stage of the class proceeding and the issues to be determined at that stage;
 - (b) the presence of subclasses;
 - (c) whether the discovery is necessary in view of the defences of the party seeking leave;
 - (d) the approximate monetary value of individual claims, if any;
 - (e) whether discovery would result in oppression or in undue annoyance, burden or expense for the class members sought to be discovered; and
 - (f) any other matter the court considers relevant.

Sanctions apply to class members

- (4) A class member is subject to the same sanctions under the Rules of Civil Procedure as a party for failure to submit to discovery. *2021,c.30,s.20.*

21. Examination of class member before hearing

- (1) A party shall not require a class member, other than a representative plaintiff, to be examined as a witness before the hearing of any motion, except with leave of the court.

Factors apply to decision of court

- (2) Subsection 20(3) applies to a decision whether to grant leave under subsection (1) of this section. *2021,c.30,s.21.*

22. Notice to class members

- (1) Notice that a proceeding has been certified as a class proceeding shall be given by the representative plaintiff to the class members in accordance with this section.

Dispensing with notice

- (2) The court may dispense with notice if, having regard to the factors set out in subsection (3), the court considers it appropriate to do so.

Court's order respecting notice

- (3) The court shall make an order setting out when and by what means notice is to be given under this section and in doing so shall have regard to
- (a) the cost of giving notice;
 - (b) the nature of the relief sought;
 - (c) the size of the individual claims of the class members;
 - (d) the number of class members;
 - (e) the presence of subclasses;
 - (f) the places of residence of class members; and
 - (g) any other relevant matter.

Means of giving notice

- (4) The court may order that notice be given by
- (a) personal delivery;
 - (b) mail;
 - (c) posting, advertising, publishing or leafletting;
 - (d) individually notifying a sample group within the class; or
 - (e) any other means or combination of means that the court considers appropriate.

Different means may be specified

- (5) The court may order that notice be given to different class members by different means.

Content of notice

- (6) Unless the court orders otherwise, notice under this section shall
- (a) describe the proceeding, including the names and addresses of the representative plaintiffs and the relief sought;
 - (b) state the manner in which and the time within which a class member may opt out of the proceeding;
 - (c) describe any counterclaim or third party proceeding being asserted in the proceeding, including the relief sought;
 - (d) summarize any agreements respecting fees and disbursements

- (i) between the representative plaintiff and the representative plaintiff's lawyers, and
 - (ii) if the recipient of the notice is a member of a subclass, between the representative plaintiff for that subclass and that representative plaintiff's lawyers;
- (e) describe the possible financial consequences of the proceedings to class members and subclass members;
- (f) state that the judgment on the common issues for the class, whether favourable or not, will bind all class members who do not opt out of the proceeding;
- (g) state that the judgment on the common issues for a subclass, whether favourable or not, will bind all subclass members who do not opt out of the proceeding;
- (h) describe the rights, if any, of class members to participate in the proceeding;
- (i) give an address to which class members may direct inquiries about the proceeding; and
- (j) give any other information the court considers appropriate.

Notice may include solicitation

- (7) With leave of the court, notice under this section may include a solicitation of contributions from class members to assist in paying lawyers' fees and disbursements.

Plain language

- (8) A notice under this section, section 23 or section 24 shall be written in a plain language manner. *2021, c.30, s.22.*

23. Notice of determination of common issues

- (1) Where the court determines common issues in favour of a class and considers that the participation of individual class members is required to determine individual issues, the representative plaintiff shall give notice to those members in accordance with this section.

Application of notice requirements

- (2) Subsections 22(3) to (5) apply to notice given under this section.

Content of notice

- (3) Notice under this section shall
 - (a) state that common issues have been determined;
 - (b) identify the common issues that have been determined and explain the determinations made;
 - (c) state that members of the class or subclass may be entitled to individual relief;
 - (d) describe the steps that shall be taken to establish an individual claim;
 - (e) state that failure on the part of a member of the class or subclass to take those steps will result in the member not being entitled to assert an individual claim except with leave of the court;
 - (f) give an address to which members of the class or subclass may direct inquiries about the proceeding; and
 - (g) give any other information that the court considers appropriate. *2021, c.30, s.23.*

24. Notice to protect interests of affected persons

- (1) At any time in a class proceeding, the court may order any party to give notice to the persons that the court considers necessary to protect the interests of any class member or party or to ensure the fair conduct of the proceeding.

Application of notice requirements

- (2) Subsections 22(3) to (5) apply to notice given under this section. *2021,c.30,s.24.*

25. Court's approval required

A notice under this Part shall be approved by the court before it is given. *2021,c.30,s.25.*

26. Giving of notice on behalf of other party

The court may order a party to give the notice required to be given by another party under this Act. *2021,c.30,s.26.*

27. Costs of notice

- (1) The court may make any order it considers appropriate as to the costs of any notice under this Part, including an order apportioning costs among parties.

Court may consider interests of subclass

- (2) In making an order under subsection (1), the court may have regard to the different interests of a subclass.

Exception

- (3) Despite subsection (1), the costs of a notice under this section may be awarded to the representative plaintiff only in the event of success in the class proceeding, except to the extent the defendant consents to their payment in whole or in part at an earlier time, and, for greater certainty, those costs shall not be ordered to be paid by the defendant at any earlier time without the defendant's consent. *2021,c.30,s.27.*

PART 4 - ORDERS, AWARDS AND RELATED PROCEDURES

Orders on Common Issues and Individual Issues

28. Content of order on common issues

An order made in respect of a judgment on common issues of a class or subclass shall

- (a) set out the common issues;
- (b) name or describe the class or subclass members to the extent possible;
- (c) state the nature of the claims asserted on behalf of the class or subclass; and
- (d) specify the relief granted. *2021,c.30,s.28.*

29. Judgment on common issues is binding

- (1) A judgment on common issues of a class or subclass binds every member of the class or subclass, as the case may be, who has not opted out of the class proceeding, but only to the extent that the judgment determines common issues that

- (a) are set out in the certification order;
- (b) relate to claims described in the certification order; and
- (c) relate to relief sought by the class or subclass as stated in the certification order.

Party not bound in subsequent proceeding

- (2) A judgment on common issues of a class or subclass does not bind a party to the class proceeding in any subsequent proceeding between the party and a person who opted out of the class proceeding. *2021, c.30, s.29.*

30. Determination of individual issues

- (1) Where the court determines common issues in favour of a class or subclass and determines that there are issues, other than those that may be determined under section 35, that are applicable only to certain individual members of the class or subclass, the court may
 - (a) determine those individual issues in further hearings presided over by the judge who determined the common issues or by another judge of the court;
 - (b) appoint one or more persons including, without limitation, one or more independent experts, to conduct an inquiry into those individual issues and report back to the court; or
 - (c) with the consent of the parties, direct that those individual issues be determined in any other manner.

Court may direct procedures

- (2) The court may give any necessary directions relating to the procedures that shall be followed in conducting hearings, inquiries and determinations under subsection (1).

Applicable criteria and discretion of court

- (3) In giving directions under subsection (2), the court shall choose the least expensive and most expeditious method of determining the individual issues that is consistent with justice to members of the class or subclass and the parties and, in doing so, the court may
 - (a) dispense with any procedural step that it considers unnecessary; and
 - (b) authorize any special procedural steps, including steps relating to discovery, and any special rules, including rules relating to admission of evidence and means of proof, that it considers appropriate.

Time for making claims

- (4) The court shall set a reasonable time within which individual members of the class or subclass may make claims under this section in respect of the individual issues.

Late claims barred except with leave of court

- (5) A member of the class or subclass who fails to make a claim within the time set under subsection (4) may not later make a claim under this section in respect of the issues applicable only to that member except with leave of the court.

Criteria for granting leave

- (6) The court may grant leave under subsection (5) if it is satisfied that
 - (a) there are apparent grounds for relief;
 - (b) the delay was not caused by any fault of the person seeking the relief; and
 - (c) the defendant would not suffer substantial prejudice if leave were granted.

Determination deemed to be order of court

- (7) Unless otherwise ordered by the court making a direction under clause (1)(c), a determination of issues made in accordance with clause (1)(c) is deemed to be an order of the court. *2021, c.30, s.30.*

31. Individual assessment of liability

Without limiting section 30, if, after determining common issues in favour of a class or subclass, the court determines that the defendant's liability to individual class members cannot reasonably be determined without proof by those individual class members, section 30 applies to the determination of the defendant's liability to those class members. *2021, c.30, s.31.*

Aggregate Awards

32. Aggregate monetary award

- (1) The court may make an order for an aggregate monetary award in respect of all or any part of a defendant's liability to class members and may give judgment accordingly if
- (a) monetary relief is claimed on behalf of some or all class members;
 - (b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and
 - (c) the aggregate or a part of the defendant's liability to some or all class members can reasonably be determined without proof by individual class members.

Submissions by defendant

- (2) Before making an order under subsection (1), the court shall provide the defendant with an opportunity to make submissions to the court in respect of any matter touching on the proposed order including, without limitation,
- (a) submissions that contest the merits or amount of an award under that subsection; and
 - (b) submissions that individual proof of monetary relief is required due to the individual nature of the relief. *2021, c.30, s.32.*

33. Evidence respecting amount, distribution

- (1) For the purposes of determining issues relating to the amount or distribution of an aggregate monetary award under this Act, the court may admit as evidence statistical information that would not otherwise be admissible as evidence, including information derived from sampling, if the information was compiled in accordance with principles that are generally accepted by experts in the field of statistics.

Evidentiary value of statistical information

- (2) A record of statistical information purporting to be prepared by or published under the authority of an enactment of the Parliament of Canada or the legislature of any province may be admitted as evidence without proof of its authenticity.

Conditions for admission as evidence

- (3) Statistical information shall not be admitted as evidence under this section unless the party seeking to introduce the information

- (a) has given to the party against whom the statistical evidence is to be used a copy of the information at least 60 days before that information is to be introduced as evidence;
- (b) has complied with subsections (4) and (5); and
- (c) introduces the evidence by an expert who is available for cross-examination on that evidence.

Notice - source of statistical information

- (4) Notice under this section shall specify the source of any statistical information sought to be introduced that
 - (a) was prepared or published under the authority of an enactment of the Parliament of Canada or the legislature of any province;
 - (b) was derived from market quotations, tabulations, lists, directories or other compilations generally used and relied on by members of the public; or
 - (c) was derived from reference material generally used and relied on by members of an occupational group.

Notice - other information

- (5) Except with respect to information referred to in subsection (4), notice under this section shall
 - (a) specify the name and qualifications of each person who supervised the preparation of the statistical information sought to be introduced; and
 - (b) describe any documents prepared or used in the course of preparing the statistical information sought to be introduced.

Law and practice of expert evidence applies

- (6) Unless this section provides otherwise, the law and practice with respect to evidence tendered by an expert in a proceeding applies to a class proceeding.

Party may inspect document

- (7) Except with respect to information referred to in subsection (4), a party against whom statistical information is sought to be introduced under this section may require the party seeking to introduce it to produce for inspection any document that was prepared or used in the course of preparing the information, unless the document discloses the identity of persons responding to a survey who have not consented in writing to the disclosure. *2021, c.30, s.33.*

34. Average or proportional share of aggregate award

- (1) Where the court makes an order under section 32, the court may further order that all or a part of the aggregate monetary award be applied so that some or all individual class or subclass members share in the award on an average or proportional basis if
 - (a) it would be impractical or inefficient to
 - (i) identify the class or subclass members entitled to share in the award, or
 - (ii) determine the exact shares that should be allocated to individual class or subclass members; and
 - (b) failure to make an order under this subsection would deny recovery to a substantial number of class or subclass members.

Motion for exclusion

- (2) Where an order is made under subsection (1), any member of the class or subclass in respect of which the order was made may, within the time specified in the order, make a motion to

the court to be excluded from the proposed distribution and to be given the opportunity to prove that member's claim on an individual basis.

Criteria for consideration

- (3) In deciding whether to exclude a class or subclass member from an average distribution, the court shall consider
- (a) the extent to which the class or subclass member's individual claim varies from the average for the class or subclass;
 - (b) the number of class or subclass members seeking to be excluded from an average distribution; and
 - (c) whether excluding the class or subclass members referred to in clause (b) would unreasonably deplete the amount to be distributed on an average basis.

Amount to be deducted before distribution

- (4) An amount recovered by a class or subclass member who proves that member's claim on an individual basis shall be deducted from the amount to be distributed on an average basis before the distribution. *2021,c.30,s.34.*

35. Individual share of aggregate award

- (1) When the court orders that all or a part of an aggregate monetary award under subsection 32(1) be divided among individual class or subclass members on an individual basis, the court shall determine whether individual claims need to be made to give effect to the order.

Court to specify procedures

- (2) Where the court determines under subsection (1) that individual claims need to be made, the court shall specify the procedures for determining the claims.

Discretion of court

- (3) In specifying the procedures under subsection (2), the court shall minimize the burden on class or subclass members and, for that purpose, the court may authorize
- (a) the use of standard proof of claim forms;
 - (b) the submission of affidavit or other documentary evidence; and
 - (c) the auditing of claims on a sampling or other basis.

Time for making claims

- (4) When specifying the procedures under subsection (2), the court shall set a reasonable time within which individual class or subclass members may make claims under this section.

Late claims barred except with leave of court

- (5) A class or subclass member who fails to make a claim within the time set under subsection (4) may not later make a claim under this section except with leave of the court.

Criteria for granting leave

- (6) Subsection 30(6) applies to a decision whether to grant leave under subsection (5) of this section.

Court may amend judgment

- (7) The court may amend a judgment given under subsection 32(1) to give effect to a claim made with leave under subsection (5) of this section if the court considers it appropriate to do so. *2021,c.30,s.35.*

36. Court may direct distribution

- (1) The court may direct any means of distribution of amounts awarded under this Part that it considers appropriate.

Orders of court

- (2) In giving directions under subsection (1), the court may order that
- (a) the defendant distribute directly to the class or subclass members the amount of monetary relief to which each class or subclass member is entitled by any means authorized by the court, including abatement and credit;
 - (b) the defendant pay into court or some other appropriate depository the total amount of the defendant's liability to the class or subclass members until further order of the court; or
 - (c) any person other than the defendant distribute directly to each of the class or subclass members, by any means authorized by the court, the amount of monetary relief to which that class or subclass member is entitled.

Factors to be considered by court

- (3) In deciding whether to make an order under clause (2)(a), the court
- (a) shall consider whether distribution by the defendant is the most practical way of distributing the award; and
 - (b) may take into account whether the amount of monetary relief to which each class or subclass member is entitled can be determined from the records of the defendant.

Court to supervise execution of judgments, etc.

- (4) The court shall supervise the execution of judgments and the distribution of awards under this Part and may stay the whole or any part of an execution or distribution for a reasonable period on the terms it considers appropriate.

Payment of award

- (5) The court may order that an award made under this Part be paid
- (a) in a lump sum, promptly or within a time set by the court; or
 - (b) in instalments, on the terms the court considers appropriate.

Costs of distribution

- (6) The court may
- (a) order that the costs of distributing an award under this Part, including the costs of any notice associated with the distribution and the fees payable to a person administering the distribution, be paid out of the proceeds of the judgment; and
 - (b) make any further or other order it considers appropriate.

Report

- (7) No later than 60 days after the date on which the monetary award is fully distributed, including any distribution under section 37, the person who administered the distribution shall file with the court a report containing the person's best information respecting
- (a) the amount of the award before distribution;
 - (b) the total number of class or subclass members;
 - (c) the number of class or subclass members who received notice of the distribution, and a description of how notice was given;

- (d) the number of class or subclass members who made a claim and, of them, the numbers of class or subclass members who did and who did not receive moneys from the award;
- (e) the amount of the award distributed to class or subclass members and a description of how the award was distributed;
- (f) the amount and recipients of any distribution under section 37 and the amount, if any, that was subject to reversion or otherwise returned to the defendant;
- (g) the number of class or subclass members who opted out of the class proceeding;
- (h) the smallest and largest amounts distributed to class or subclass members, the average and median of the amounts distributed to class or subclass members and any other aggregate data respecting the distribution that the person who administered the distribution considers to be relevant;
- (i) the administrative costs associated with the distribution of the settlement funds;
- (j) the lawyer's fees and disbursements; and
- (k) any other information the court requires to be included. *2021,c.30,s.36.*

37. Undistributed award

- (1) The court may order that all or any part of an award or a settlement under this Part that has not been distributed within a time set by the court be applied in any manner that may reasonably be expected to benefit class or subclass members, even though the order does not provide for monetary relief to individual class or subclass members.

Factors to be considered

- (2) In deciding whether to make an order under subsection (1), the court shall consider
 - (a) whether the distribution would result in unreasonable benefits to persons who are not members of the class or subclass; and
 - (b) any other matter the court considers relevant.

Order despite lack of certainty

- (3) The court may make an order under subsection (1) whether or not all the class or subclass members can be identified or all their shares can be exactly determined.

Order despite benefit to others

- (4) The court may make an order under subsection (1) even if the order would benefit
 - (a) persons who are not class or subclass members; or
 - (b) persons who may otherwise receive monetary relief as a result of the class proceeding.

Unclaimed amounts

- (5) Where any part of an award that, under subsection 35(1), or a settlement that, under section 38, is to be divided among individual class or subclass members remains unclaimed or otherwise undistributed after a time set by the court, the court may order that part of the award
 - (a) be applied against the cost of the class proceeding;
 - (b) be forfeited to the Government;
 - (c) be paid to a registered charity within the meaning of the *Income Tax Act* (Canada) or a non-profit organization that is agreed on by the parties, where the court determines that payment of the amount to the registered charity or the non-profit organization

- would reasonably be expected to directly or indirectly benefit the class or subclass members; or
- (d) be returned to the party against whom the award was made. 2021,c.30,s.37.

Termination of Proceedings and Appeals

38. Settlement

- (1) A class proceeding may be settled only
- (a) with the approval of the court; and
 - (b) on the terms the court considers appropriate.

Settlement of common issues of subclass

- (2) A settlement may be concluded in relation to the common issues affecting a subclass only
- (a) with the approval of the court; and
 - (b) on the terms the court considers appropriate.

Evidentiary requirements

- (3) On a motion for approval of a settlement, the moving party shall make full and frank disclosure of all material facts, including, in one or more affidavits filed for use on the motion, the party's best information respecting the following matters, which the court shall consider in determining whether to approve the settlement:
- (a) evidence as to how the proposed settlement is fair, reasonable and in the best interests of the class or subclass members, as the case may be;
 - (b) any risks associated with continued litigation;
 - (c) the range of possible recoveries in the litigation;
 - (d) the method used for valuation of the settlement;
 - (e) the total number of class or subclass members, as the case may be;
 - (f) a plan for allocating and distributing the settlement funds, including any proposal respecting the appointment of an administrator under subsection (4), and the anticipated costs associated with the distribution;
 - (g) the number of class or subclass members expected to make a claim under the settlement and, of them, the numbers of class or subclass members who are and who are not expected to receive settlement funds;
 - (h) the number of class or subclass members who have objected or are expected to object to the settlement and the nature or anticipated nature of the objections;
 - (i) a plan for giving notice of the settlement to class or subclass members in the event of an order under section 24, and the number of class or subclass members who are expected to receive the notice;
 - (j) any other prescribed information.

Court-appointed administrator

- (4) The court may appoint a person or entity to act as an administrator to administer the distribution of settlement funds.

Report

- (5) No later than 60 days after the date on which the settlement funds are fully distributed, including any distribution under section 37, the administrator or other person or entity who

administered the distribution shall file with the court a report containing the administrator's, person's or entity's best information respecting

- (a) the amount of the settlement funds before distribution;
- (b) the total number of class or subclass members;
- (c) the number of class or subclass members who received notice of the distribution, and a description of how notice was given;
- (d) the number of class or subclass members who made a claim under the settlement and, of them, the numbers of class or subclass members who did and who did not receive settlement funds;
- (e) the amount of the settlement funds distributed to class or subclass members and a description of how the settlement funds were distributed;
- (f) the amount and recipients of any distribution under section 37 and the amount, if any, that was subject to reversion or otherwise returned to the defendant;
- (g) the number of class or subclass members who objected to the settlement and the nature of their objections;
- (h) the number of class or subclass members who opted out of the class proceeding;
- (i) the smallest and largest amounts distributed to class or subclass members, the average and median of the amounts distributed to class or subclass members and any other aggregate data respecting the distribution that the administrator or other person or entity who administered the distribution considers to be relevant;
- (j) the administrative costs associated with the distribution of the settlement funds;
- (k) the lawyer's fees and disbursements; and
- (l) any other information the court requires to be included.

Settlement not binding without court approval

- (6) A settlement under this section is not binding unless approved by the court.

Approved settlement is binding

- (7) A settlement of a class proceeding or of common issues affecting a subclass that is approved by the court binds every member of the class or subclass who has not opted out of the class proceeding, but only to the extent provided by the court. *2021, c.30, s.38.*

39. Discontinuance, abandonment

A class proceeding may be discontinued or abandoned only

- (a) with the approval of the court; and
- (b) on the terms the court considers appropriate. *2021, c.30, s.39.*

40. Court's determination respecting notice

In dismissing a class proceeding for delay, other than under section 41, or in approving a settlement, discontinuance or abandonment, the court shall consider whether notice should be given under section 22 and whether the notice should include

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding; and
- (c) a description of any plan for distributing any settlement funds. *2021, c.30, s.40.*

41. Mandatory dismissal for delay

- (1) The court shall, on motion, dismiss for delay a proceeding commenced under section 3 or 4 unless, by the first anniversary of the day on which the proceeding was commenced,
- (a) the representative plaintiff has filed a motion record in the motion for certification in accordance with the Rules of Civil Procedure;
 - (b) the parties have agreed in writing to a timetable for service of the representative plaintiff's motion record in the motion for certification or for completion of one or more other steps required to advance the proceeding, and have filed the timetable with the court;
 - (c) the court has ordered that the proceeding not be dismissed and has established a timetable for service of the representative plaintiff's motion record in the motion for certification or for the completion of one or more steps required to advance the proceeding; or
 - (d) any other steps, occurrences or circumstances specified by the regulations have taken place.

Notice

- (2) Where a proceeding is dismissed for delay under subsection (1), the court shall order that the lawyer for the representative plaintiff give notice of the dismissal by
- (a) publishing the notice and a copy of the order on the lawyer's website or the website of the law firm or other entity through which the lawyer practises law;
 - (b) sending the notice and a copy of the order to every class member who has contacted the lawyer to express an interest in the proceeding; and
 - (c) taking any other steps to give notice that the court may specify.

Details respecting notice

- (3) Section 22 applies, with any necessary modifications, to a notice required to be given under subsection (2).

Costs

- (4) The lawyer for the representative plaintiff shall bear the costs of giving notice under subsection (2) and shall not attempt to recoup any portion of the costs from the class or any class member or from the defendant. *2021, c.30, s.41.*

42. Right to appeal - common issues

- (1) Any party may appeal without leave to the Court of Appeal from
- (a) a judgment on common issues; or
 - (b) an order under this Part, other than an order that determines individual claims made by class or subclass members.

Leave to appeal - individual claim

- (2) With leave of a justice of the Court of Appeal, a class or subclass member, a representative plaintiff or a defendant may appeal to that court any order
- (a) determining an individual claim made by a class or subclass member; or
 - (b) dismissing an individual claim for monetary relief made by a class or subclass member.

Leave to appeal - orders respecting certification

- (3) With leave of a justice of the Court of Appeal, any party may appeal to the Court of Appeal from
- (a) an order certifying or refusing to certify a proceeding as a class proceeding; or
 - (b) an order decertifying a proceeding.

Motion for leave to act as representative plaintiff

- (4) Where a representative plaintiff does not appeal or seek leave to appeal as permitted by subsection (1) or (3) within the time limit for bringing an appeal set under the Rules of Civil Procedure or where a representative plaintiff abandons an appeal under subsection (1) or (3), any member of the class or subclass for which the representative plaintiff had been appointed may make a motion to a justice of the Court of Appeal for leave to act as the representative plaintiff for the purposes of subsection (1) or (3).

Time for motion

- (5) A motion by a class or subclass member for leave to act as the representative plaintiff under subsection (4) shall be made within 30 days after the expiry of the appeal period available to the representative plaintiff or by another date ordered by the justice. *2021, c.30, s.42.*

PART 5 - COSTS, FEES AND DISBURSEMENTS

43. Costs

- (1) Subject to this section, with respect to any proceeding or other matter under this Act, the court may award costs in accordance with the Rules of Civil Procedure.

Class members not liable

- (2) Class members, other than a representative plaintiff, are not liable for costs except with respect to the determination of their own individual claims.

Factors for court's consideration

- (3) In exercising its discretion with respect to costs under this section, the court may consider whether the proceeding was a test case, raised a novel point of law or involved a matter of public interest. *2021, c.30, s.43.*

44. Written agreement required - fees and disbursements

- (1) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff shall be in writing and shall
- (a) state the terms under which fees and disbursements are to be paid;
 - (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class proceeding; and
 - (c) state the method by which payment is to be made, whether by lump sum or otherwise.

Holdback

- (2) The court may determine and specify an amount or portion of the fees and disbursements owing to a lawyer that shall be held back from payment until

- (a) the report required under subsection 36(7) or subsection 38(5), as the case may be, has been filed with the court and the court is satisfied that the report meets the requirements of the applicable subsection; and
- (b) the court is satisfied with the distribution of the monetary award or settlement funds in the circumstances, including that number of class or subclass members who made a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who did and who did not receive monetary relief or settlement funds.

Court approval required for enforcement

- (3) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff is not enforceable unless approved by the court, on the motion of the lawyer.

Notice requirements

- (4) A motion under subsection (3) may,
 - (a) unless the court otherwise orders, be brought without notice to the defendants; or
 - (b) if notice to the defendants is required, be brought on the terms respecting disclosure of the whole or any part of the agreement respecting fees and disbursements that the court may order.

Interest on fees

- (5) Interest payable on fees under an agreement approved under subsection (3) shall be calculated in the manner set out in the agreement or, if not so set out,
 - (a) at the prejudgment interest rate, as that term is defined in clause 56(1)(d) of the *Judicature Act* R.S.P.E.I 1988, Cap. J-2.1; or
 - (b) at any other rate the court considers appropriate.

Interest on disbursements

- (6) Interest payable on disbursements under an agreement approved under subsection (3) shall be calculated in the manner set out in the agreement or, if not so set out,
 - (a) at the prejudgment interest rate, as that term is defined in clause 56(1)(d) of the *Judicature Act*; or
 - (b) at any other rate the court considers appropriate, on the balance of disbursements incurred as totalled at the end of each six-month period following the date of the agreement.

First charge on settlement funds, monetary award

- (7) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

Determination of amount owing

- (8) Where an agreement is not approved by the court, the court may
 - (a) determine the amount owing to the lawyer in respect of fees and disbursements;
 - (b) direct an inquiry, assessment or accounting under the Rules of Civil Procedure to determine the amount owing; or
 - (c) direct that the amount owing be determined in any other manner. *2021,c.30,s.44.*

45. Third-party funding agreement, defined

- (1) In this section, “third-party funding agreement” means an agreement in which a funder who is not a party to a proceeding under this Act agrees to indemnify the representative plaintiff or provide money to pursue the proceeding under this Act, in return for a share of any monetary award or settlement funds or for any other consideration.

Contingent on court approval

- (2) A third-party funding agreement is subject to the approval of the court, obtained on a motion of the representative plaintiff made as soon as practicable after the agreement is entered into, with notice to the defendant.

No force or effect unless approved

- (3) A third-party funding agreement that is not approved by the court is of no force or effect.

Agreement to be provided to defendant, filed

- (4) For the purposes of the motion, the representative plaintiff shall serve on the defendant, or provide in any other way the court orders, a copy of the third-party funding agreement and shall file a copy with the court.

Permissible redaction

- (5) The representative plaintiff may, subject to the regulations, redact from the copy of the third-party funding agreement provided and filed under subsection (4) information that may reasonably be considered to confer a tactical advantage on the defendant, but no other information shall be redacted from the copy.

Full agreement to be provided to judge

- (6) The representative plaintiff shall provide to the judge who will preside at the hearing of the motion a copy of the complete and unredacted third-party funding agreement, which shall not form part of the court file.

Factors

- (7) The court shall not approve a third-party funding agreement unless
- (a) the court is satisfied that
 - (i) the agreement, including indemnity for costs and amounts payable to the funder under the agreement, is fair and reasonable,
 - (ii) the agreement will not diminish the rights of the representative plaintiff to instruct the lawyer or control the litigation or otherwise impair the lawyer-client relationship,
 - (iii) the funder is financially able to satisfy an adverse costs award in the proceeding, to the extent of the indemnity provided under the agreement, and
 - (iv) any prescribed requirements and other relevant requirements are met; and
 - (b) it is a term of the agreement that the funder shall be subject to
 - (i) the same confidentiality requirements in respect of confidential or privileged information in the proceeding to which the representative plaintiff would be subject, and
 - (ii) the deemed undertaking rule set out in the Rules of Civil Procedure, as if the funder were a party to the proceeding.

Indemnity for costs

- (8) If costs are ordered to be paid by the representative plaintiff, the defendant has the right to recover the costs directly from the funder to the extent of the indemnity provided under an approved third-party funding agreement.

Security for costs

- (9) The defendant is entitled, on motion, to obtain from the funder security for costs to the extent of the indemnity provided under an approved third-party funding agreement, where
- (a) the funder is ordinarily resident outside the province;
 - (b) the defendant has an order against the funder for costs in the same or another proceeding that remain unpaid in whole or in part; or
 - (c) there is good reason to believe that the funder has insufficient assets in the province to pay the costs. *2021,c.30,s.45.*

PART 6 - GENERAL MATTERS, REGULATIONS, COMMENCEMENT**46. Suspension of limitation period**

- (1) Subject to subsection (3), any limitation period applicable to a cause of action asserted in a proceeding
- (a) is suspended in favour of a person if another proceeding was commenced and it is reasonable for the person to assume that the person was a class member for the purposes of that other proceeding; and
 - (b) resumes running against the person when clauses (2)(a) to (g) apply to the person as though the person were the member referred to in subsection (2).

Limitation period - class proceeding

- (2) Subject to subsection (3), any limitation period applicable to a cause of action asserted in a proceeding that is certified as a class proceeding under this Act is suspended in favour of a class member on the commencement of the proceeding and resumes running against the class member when
- (a) the member opts out of the class proceeding;
 - (b) a ruling by the court has the effect of excluding the class member from the class proceeding or from being considered to have ever been a class member;
 - (c) an amendment is made to the certification order that has the effect of excluding the member from the class proceeding;
 - (d) a decertification order is made under section 13;
 - (e) the class proceeding is dismissed without an adjudication on the merits;
 - (f) the class proceeding is discontinued or abandoned with the approval of the court; or
 - (g) the class proceeding is settled with the approval of the court, unless the settlement provides otherwise.

Effect of right of appeal

- (3) Where there is a right of appeal in respect of an event described in clauses (2)(a) to (g), the limitation period resumes running as soon as the time for appeal has expired without an appeal being commenced or as soon as any appeal has been finally disposed of. *2021,c.30,s.46.*

47. Application of Rules of Civil Procedure

The Rules of Civil Procedure apply to class proceedings to the extent that those rules do not conflict with this Act. *2021,c.30,s.47.*

48. Regulations

The Lieutenant Governor in Council may make regulations

- (a) specifying additional evidence required on a motion for approval of a settlement pursuant to clause 38(3)(j);
- (b) specifying other steps, occurrences or circumstances for the purposes of clause 41(1)(d);
- (c) respecting the information that is to be included in a copy of a third-party funding agreement provided and filed under subsection 45(4);
- (d) specifying additional requirements for approval of a third-party funding agreement pursuant to subclause 45(7)(a)(iv);
- (e) respecting any other matter that, under this Act, may or shall be prescribed or done by regulation. *2021,c.30,s.48.*